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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DANIEL HOEFT,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

NEIL F. HARTIGAN
Attorney General, State of Illinois
ROMA J. STEWART
Solicitor General, State of Illinois
MARK L. ROTERT *
MARIE QUINLIVAN CZECH **
Assistant Attorneys General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-2570
ATTORNEYS FOR RESPONDENT

JOHN BARICEVIC
State's Attorney, St. Clair County
OF COUNSEL

* Counsel of Record.
** William Pistorius, a student at DePaul University College of Law, assisted in the research and preparation of this Brief in Opposition.

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QUESTION PRESENTED FOR REVIEW

Whether this Court should consider petitioner's argument that he was denied due process where he was not allowed to present witnesses at his mitigation sentencing hearing after pleading guilty where the facts are not as petitioner claims them to be, the statute petitioner relies upon is not under constitutional attack, and decisions of this Court lend no credence to petitioner's position.

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RELEVANT STATUTE INVOLVED

Illinois Revised Statutes 1983,
ch. 110A, Rule 402(d)(2)

If a tentative plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specified sentence will be imposed or that other charges before the court will be dismissed, the trial judge may permit, upon request of the parties, the disclosure to him of the tentative agreement and the reasons therefor in advance of the tender of the plea. At

the same time he may also receive, with the consent of the defendant, evidence in aggravation or mitigation. The judge may then indicate to the parties whether he will concur in the proposed disposition; and if he has not yet received evidence in aggravation or mitigation, he may indicate that his concurrence is conditional on that evidence being consistent with the representation made to him. If he has indicated his concurrence or conditional concurrence, he shall so state in open court at the time the agreement is stated as required by paragraph (b) of this rule. If the defendant thereupon pleads guilty, but the trial judge later withdraws his concurrence or conditional concurrence, he shall so advise the parties and then call upon the defendant either to affirm or to withdraw his plea of guilty. If the defendant thereupon withdraws his plea, the trial judge shall recuse himself.

STATEMENT OF THE CASE

Petitioner pled guilty to attempt robbery on June 21, 1984. The negotiated plea called for a sentence of three years. Petitioner was sentenced on August 1, 1984. At that time, a presentence report was presented to the sentencing court and attorneys for both the State and petitioner. (Pet. App. A-2)* Petitioner's counsel made several additions and corrections to the presentence report. He went into great detail concerning petitioner's most recent employment and the raise that employer had given petitioner. (Pet. App. A-2) He also explained that the report should be corrected to show that petitioner had served four years in the Navy rather than three. (Pet. App. A-3)

* References are to Petitioner's Appendix.

After noting these corrections, the trial court asked petitioner what he had to say. (Pet. App. A-3) Petitioner made no response.

Thereafter, counsel asked to present testimony on petitioner's behalf. The court refused counsel's request. (Pet. App. A-4) Petitioner's counsel agreed to not present the witnesses. (Pet. App. A-4) He said that his purpose in presenting testimony was to inform the court that petitioner had been a good employee. (Pet. App. A-5) He said that "the record reflects the statements of the man that I was going to call anyway." (Pet. App. A-5)

The sentencing court then said that it had made an independent assessment of the pre-sentencing investigation and report. (Pet. App. A-6) The court said that because there had been plea negotiations there would be no evidence in aggravation and mitigation. (Pet. App. A-6) The court said that it would abide by the plea negotiations and sentenced petitioner to three years imprisonment. (Pet. App. A-6)

REASONS FOR DENYING THE WRIT

I.

THIS COURT SHOULD NOT ADDRESS THE MERITS OF THIS CASE BECAUSE PETITIONER'S ARGUMENT IS ENTIRELY FACTUAL. FURTHERMORE, PETITIONER WAS TREATED FAIRLY IN THE COURTS BELOW AND, THEREFORE, GRANTING REVIEW WOULD BE OF NO PRECEDENTIAL VALUE.

Petitioner argues that because he was not permitted to present witnesses in mitigation at his sentencing hearing after pleading guilty, he was denied procedural due proc-

ess. Such a claim is purely factual in nature. Petitioner does not argue that the Illinois statute he relies upon is unconstitutional, but rather that the statute as applied to the facts of his case denied him a fair hearing. However, the purpose of granting certiorari is not to "review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). *Accord, Texas v. Mead*, ___ U.S. ___, 104 S.Ct. 1318, 1320 (1984). If this Court were to grant review in the instant case, the result would be a factually specific opinion with little or no precedential value.

Moreover, petitioner has been treated fairly. Petitioner conceded his guilt in the course of good-faith negotiations and agreed to the exact sentence which he eventually received. The trial judge offered petitioner an opportunity for allocution which was not acted upon. (Pet. App. A-3) Petitioner's attorney was allowed to amend and correct the presentence report. (Pet. App. A-2, A-3) The only evidence not permitted was character witness testimony, and, when this was denied, petitioner's attorney stated that the "record reflects the statements of the man I was going to call anyway." (Pet. App. A-5)

Moreover, contrary to petitioner's argument, the sentencing court said that it had independently considered the presentence report. (Pet. App. A-6)

Hence, this Court need not grant certiorari in this case merely to review the facts. Such review would yield an opinion with no precedential value. Nor does justice require review since petitioner received fair treatment in the courts below.

II.

THIS COURT HAS NEVER HELD THAT A CRIMINAL DEFENDANT HAS A RIGHT TO A FULL SENTENCING HEARING AFTER ENTERING A PLEA OF GUILTY. FURTHERMORE, ILLINOIS SPECIFICALLY PROVIDES THAT A FULL SENTENCING HEARING IS NOT REQUIRED FOLLOWING SUCH A NEGOTIATED PLEA.

This Court has held that a criminal defendant has no constitutional right to allocution. *Hill v. United States*, 368 U.S. 424, 428-29 (1962). Moreover, this Court has never granted a criminal defendant the right to a full hearing following a negotiated plea. The decisions petitioner relies upon are inapposite.

In *Townsend v. Burke*, 334 U.S. 736 (1948), the trial judge violated due process by basing his sentencing decision on assumptions that were materially untrue. Such was not the case here. As already indicated in respondent's Argument I, petitioner's counsel not only presented evidence in mitigation, but he painstakingly corrected the minor errors that did appear in the record. (Pet. App. A-2, A-3)

The remaining authority petitioner largely relies upon are cases involving Rule 32(a) of the Federal Rules of Criminal Procedure, which grants a federal criminal defendant the right of allocution. *Green v. United States*, 365 U.S. 301 (1960), *United States v. Johnson*, 315 F.2d 714 (2d Cir. 1963). Not only are the federal rules inapplicable to state trials, but, as already noted, the sentencing court gave petitioner an opportunity to speak on his own behalf. (Pet. App. A-3)

The law governing sentencing hearings in Illinois is very clear. When the type of negotiated plea that was involved in this case is employed, and the trial judge concurs in the disposition recommended by the parties, there is no

necessity for a formal sentencing hearing. Ill. Rev. Stat. 1983, ch. 110A, Rule 402(d)(2); *People v. Barto*, 63 Ill.2d 17, 344 N.E.2d 433 (1976). It is clear from the language of Rule 402(d)(2) that it is discretionary with the trial court as to whether or not to hear evidence in mitigation. It is equally clear from the record before this Court that the trial judge here considered evidence in mitigation and still concurred in the disposition recommended by both parties.

The Illinois statute relied upon by the petitioner only mandates a sentencing hearing in those cases involving a *determination* of guilt. Illinois Revised Statutes 1983, ch. 38, § 1005-4-1(a). In *People v. Melvin*, 27 Ill. App. 3d 269, 327 N.E.2d 139 (5th Dist. 1975) and *People v. Cooper*, 33 Ill. App. 3d 367, 342 N.E.2d 413 (5th Dist. 1975), the Illinois Appellate Court differentiated between sentencing following a negotiated plea and sentencing following a determination of guilt. The court explained that the statute made sentencing mandatory only following a determination of guilt. In a plea negotiation, however, the defendant confesses guilt. Thus, there has been no determination of guilt and the sentencing hearing is not required. *Melvin*, 27 Ill. App. 3d at 273.

The *Melvin* court also reasoned that the defendant who negotiates a plea does so in reliance on promises from the state. He presents all relevant sentencing factors to the state and avoids "having those factors considered by someone else in the determination of the sentence." *Id.* Hence, the defendant actually agrees to not present factors in mitigation to the court.

Therefore, since this Court has never held that a criminal defendant has a right to a full sentencing hearing following a negotiated plea, petitioner has not suffered any

constitutional wrong. Also, Illinois law specifically provides that a full sentencing hearing is not necessary after a defendant's negotiated plea. Thus, the Illinois courts were not at all remiss in their treatment of petitioner and review by this Court is unnecessary.

CONCLUSION

For all of the foregoing reasons, respondents respectfully request that this Court deny the instant petition for a writ of certiorari.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General, State of Illinois

ROMA J. STEWART
Solicitor General, State of Illinois

MARK L ROTERT *
MARIE QUINLIVAN CZECH **
Assistant Attorneys General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-2570

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JOHN BARICEVIC
State's Attorney, St. Clair County

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